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IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

CHHATTISGARH

Single Bench

MISC. APPEAL (C) NO. 136 OF 2007

APPELLANT/ CLAIMANT

1. Madan Pradhan, S/o Lekra, Aged about 36 years, Cultivator, R/o Bhulumuda, PS Sariya, Tehsil Sarangarh, District Raigarh (CG).

Versus

RESPONDENTS

1. Smt. Phool Bai Mehar, W/o Jayjay Ram Mehar

OWNER

2. Kishore Mehar, S/o Jayjay Ram Mehar.

DRIVER

3. Ashok Mehar, S/o Jayjay Ram Mehar.

Respondents No. 1 to 3 are R/o Village Sariya, Thana Sariya, Tahsil Sarangarh, Dist Raigarh.

4. New India Insurance Company, Sattigudi Chowk, Branch Raigarh, District Raigarh (CG).

P.R. No. 23/1/07
Presented by Shri Pradhan Counsel
27/1/07

MEMO OF MISC. APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLE ACT

XI-HC-78

(29)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.(C) No. 136 ..... सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12.02.2007

Appellant-Madan Pradhan by Shri H.S.Patel, Advocate.

This Misc. Appeal is being disposed of finally at the stage of admission without notice to the respondents.

The appellant is aggrieved by an order dated 26.10.2006 passed by the Second Additional District Judge, Camp Sarangarh, whereby the prayer for grant of an opportunity to adduce evidence by the applicant was turned down and the application for compensation was dismissed under Order 17 Rule 3 C.P.C.

The impugned order is *per se* illegal, being contrary to principles of natural justice and is liable to be set aside. The applicant was present before the M.A.C.T. in person on 26.10.2006 yet even his statement was not recorded. There is nothing on record to show that the prayer made by the applicant for adjournment was not bona fide. In the absence of any mala fide apparent on the record, the learned Second Additional District Judge ought to have granted opportunity to the applicant to adduced evidence. Since there is nothing on record to show that the applicant deliberately failed to adduce evidence or to keep his witnesses present, the learned lower Court grossly erred in rejecting his prayer for adjournment and dismissing the application for compensation under Order 17 Rule 3 C.P.C.

This appeal is allowed. Order dated 26.10.2006 is set aside. The learned Second Additional Judge, Camp Court, Sarangarh shall issue fresh notice to the non-applicants and after giving a reasonable opportunity to the parties to adduce evidence, decide the claim in accordance with law.

P.T.O.

XI-HC-78

(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.(C) No. 136 **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	The applicant shall remain present before the learned Second Additional District Judge, Sarangarh on 22nd February 2007. No further notice shall be necessary. C.C. as per rules.	Sd/- Dilip Raosaheb Deshmukh Judge